

United States
Circuit Court of Appeals
For the Ninth Circuit.

20

ARCHIE POULAS,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division

FILED

JAN - 5 1938

PAUL F. O'BRIEN,
CLERK

No. 8686

United States
Circuit Court of Appeals
For the Ninth Circuit.

ARCHIE POULAS,

Appellant,
vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Western District of Washington,
Northern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

Mr. EDWARD H. CHAVELLE,
Attorney for Appellant,
315 Lyon Bldg.,
Seattle, Washington.

Messrs. J. CHARLES DENNIS and G. D. HILE,
Attorneys for Appellee,
222 Post Office Bldg.,
Seattle, Washington. [1*]

United States District Court, Western District of
Washington, Northern Division

November Term, 1936

No. 44313

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARCHIE POULAS, alias James Melton Miller,
Defendant.

INDICTMENT

United States of America,
Western District of Washington,
Northern Division—ss.

Violation Sections 1287 and 1441, Title 26, U. S.
C. A.

The grand jurors of the United States of America
being duly selected, impaneled, sworn, and charged

*Page numbering appearing at the foot of page of original certified
Transcript of Record.

to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I

That Archie Poulas, alias James Melton Miller, whose true and full name is to the grand jurors unknown, on or about the seventeenth day of February, in the year of our Lord one thousand nine hundred thirty-seven, in the vicinity of premises located in the 3100 block on Western Avenue, at the City of Seattle, in the Northern Division of the Western District of Washington, within the jurisdiction of this Court, and within the Internal Revenue Collection District of Washington then and there being, did then and there knowingly, wilfully, unlawfully and feloniously remove and aid and abet in the removal of, to-wit, Five (5) Gallons of Whiskey on which the tax due the government of the United States had not then and there been paid, to a place other than a bonded warehouse provided by law and to the grand jurors unknown, and did then and there conceal and aid in the concealment of the said whiskey so removed; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: [2]

COUNT II

That Archie Poulas, alias James Melton Miller, whose true and full name is to the grand jurors

unknown, on or about the seventeenth day of February, in the year of our Lord one thousand nine hundred thirty-seven, in the Northern Division of the Western District of Washington, within the jurisdiction of this Court, and within the Internal Revenue Collection District of Washington then and there being, did then and there knowingly, wilfully, unlawfully and feloniously remove, deposit and conceal, with intent to defraud the United States of the internal revenue taxes due thereon as fixed by law, in the vicinity of premises located in the 3100 block on Western Avenue, at the City of Seattle, Washington, to-wit: Five (5) Gallons of Whiskey contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

J. CHARLES DENNIS

United States Attorney

G. D. HILE

Assistant United States Attorney

[Endorsed]: A True Bill.

GLEN McLEOD,

Foreman

J. CHARLES DENNIS

Dismissed. J. C. B.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court Feb. 27, 1937. Edgar M. Lakin, Clerk.
By Truman Egger, Deputy. [3]

[Title of Court and Cause.]

ARRAIGNMENT AND PLEA

Now on this 8th day of March, 1937, Gerald Shucklin, Assistant United States District Attorney appearing for the plaintiff, the defendant Archie Poulas, alias James Melton Miller, accompanied by his counsel E. H. Chavelle, Esq. comes into open court for arraignment and answers that his true name is Archie Poulas. He waives the formal reading of the Indictment and now enters a plea of not guilty to the charges of the Indictment. The cause is now ordered placed on the assignment calendar.

Journal No. 24, page 528. [4]

[Title of Court and Cause.]

PETITION TO SUPPRESS

To the Honorable Judges of the United States District Court for the Western District of Washington, Northern Division:

Archie Poulas of Seattle, King County, Washington, respectfully shows:

I.

Tha on the 17th day of February, 1937 on Western Avenue in the City of Seattle, County of King, State of Washington, your petitioner was sitting in a sedan Oldsmobile automobile belonging to one, Anderson, and that Internal Revenue Agents, E. Kelly and N. F. Strubin, approached said car without any search warrant or any warrant whatso-

ever and proceeded to search the same and found in the automobile of said Anderson, something that they claimed was contraband and that without a warrant searched and seized from the said car the said article and seized said automobile and arrested your petitioner.

II.

That your petitioner is not engaged in any business of any kind pertaining to or connected with the transportation of or possession of intoxicating liquors and that affiant was acting in a lawful and orderly manner and was merely sitting in said car waiting for the said Anderson to return but the said officers did not pretend to have a legal right to search said car or seize from the said automobile any of the articles therein contained but without authority and in violation of the constitutional rights of the petitioner they seized and took from said automobile [5] said articles which they intend to use against the said petitioner in the trial of this case.

Petitioner, therefore prays that a rule be made requiring the United States attorney for the Western District of Washington, Northern Division, to show cause before this Court why said search warrant should not be quashed and for nothing holden and why the said District Attorney and Internal Revenue Department should not be restrained from making any use of the said articles seized by them

and for such other and further relief as to the Court shall seem just.

ARCHIE POULAS

Petitioner

EDWARD H. CHAVELLE

Attorney for Petitioner

315 Lyon Bldg.

Seattle, Washington

United States of America,
Western District of Washington,
Northern Division—ss.

Archie Poulas, being first duly sworn, on oath, deposes and says:

That he is the petitioner named in the foregoing petition; that he has read the same, knows the contents thereof and believes the same to be true.

ARCHIE POULAS

Subscribed and sworn to before me this 26th day of August, 1937.

[Seal] EDWARD H. CHAVELLE
Notary Public in and for the State of Washington,
residing at Seattle. [6]

[Title of Court and Cause.]

**AFFIDAVIT IN SUPPORT OF PETITION
TO SUPPRESS**

United States of America,
Western District of Washington,
Northern Division—ss.

Archie Poulas, being first duly sworn, on oath, says:

That he has read the petition to suppress herein, knows the contents thereof and believes the same to be true; that said affiant especially refers to and by such reference makes the same a part of this affidavit;

That on the 17th day of February, 1937, affiant was sitting in a sedan Oldsmobile automobile belonging to one, Anderson, on Western Avenue, in the City of Seattle, County of King, State of Washington when two internal revenue agents, namely, E. Kelly and N. F. Strubin, approached the said car without any search warrant or any warrant whatsoever and proceeded to search the said car and found in the automobile of said Anderson, something which they claimed was contraband and without a warrant searched and seized from the said car the said article and seized said automobile and arrested this affiant; that at the time of said search and seizure affiant was acting in an orderly and lawful manner sitting in said car waiting for the said Anderson to return.

ARCHIE POULAS

Subscribed and sworn to before me this 26th day of August, 1937.

[Seal] EDWARD H. CHAVELLE
Notary Public in and for the State of Washington,
residing at Seattle.

Received a copy of the within petition this 27th day of Aug., 1937.

J. CHARLES DENNIS
Attorney for Pltf.

[Endorsed]: Filed Aug. 27, 1937. [7]

[Title of Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION
TO SUPPRESS

United States of America,
Western District of Washington,
Northern Division--ss.

N. F. Strubin, being first duly sworn, on oath deposes and says: That he is an Investigator of the Alcohol Tax Unit, Bureau of Internal Revenue, Treasury Department of the United States, and makes this affidavit on behalf of the United States of America.

That on February 17, 1937, I had information from a source heretofore found to be very reliable in regard to illicit liquor transactions, that the defendant Archie Poulas was to make a delivery of untaxed whiskey on the afternoon of said date to a frame dwelling house located on the westerly side of Western Avenue, Seattle, Washington, in the 3100 block, and that said defendant Archie Poulas

would be driving a 1934 brown Oldsmobile Sedan, Washington License A-25-809.

That Investigator Kelly and I proceeded at about 3:30 P. M. on said date to Queen Anne Avenue in Seattle, Washington, near the intersection of Western Avenue and Denny Way, and observed this intersection. At about 4:15 P. M. on said date I saw the Oldsmobile Sedan above [8] described, being driven by Archie Poulas, pass in front of me and turn into Western Avenue and stop directly in front of said frame house where we had been informed the delivery of untaxpaid whiskey was to be made. Archie Poulas looked around several times and in the meantime Investigator Kelly and I proceeded in the government car and approached said Oldsmobile Sedan and stopped alongside said automobile.

Thereupon Investigator Kelly explained to Poulas that he was a federal officer and asked the said Archie Poulas what he had in the car. Poulas replied that he had moonshine in the car. After hearing the reply of the said Archie Poulas I lifted up a blanket in the rear of said Oldsmobile Sedan and found five one-gallon glass jugs in a gunny sack, each jug containing one gallon of untaxpaid moonshine whiskey. Thereupon Investigator Kelly examined the contents of said gunny sack which I had removed from said Oldsmobile Sedan and placed the defendant Archie Poulas under arrest.

That prior to the time the foregoing facts occurred I knew that Poulas had a reputation for being a persistent violator of the Internal Revenue laws of the United States relating to liquor.

N. F. STRUBIN

Subscribed and sworn to before me this 1st day of September, 1937.

[Seal]

S. COOK,

Deputy Clerk, U. S. District Court, Western District of Washington.

Received a copy of the within affidavit this 7th day of Sept., 1937.

EDWARD H. CHAVELLE

Attorney for def.

[Endorsed]: Filed Sep. 7, 1937. [9]

[Title of Court and Cause.]

AFFIDAVIT IN OPPOSITION TO MOTION
TO SUPPRESS

United States of America,
Western District of Washington,
Northern Division—ss.

E. T. Kelly, being first duly sworn, on oath deposes and says: That he is an Investigator of the Alcohol Tax Unit, Bureau of Internal Revenue, Treasury Department of the United States, and makes this affidavit on behalf of the United States of America.

That on February 17, 1937, I had information from a source heretofore found to be very reliable in regard to illicit liquor transactions, that the defendant Archie Poulas was to make a delivery of untaxed whiskey on the afternoon of said date to a frame dwelling house located on the westerly side of Western Avenue, Seattle, Washington, in the

3100 block, and that said defendant Archie Poulas would be driving a 1934 brown Oldsmobile Sedan, Washington License A-25-809.

That Investigator Strubin and I proceeded at about 3:30 P. M. on said date to Queen Anne Avenue in Seattle, Washington, near the intersection of Western Avenue and Denny Way, and observed this intersection. At about 4:15 P. M. on said date I saw the Oldsmobile Sedan above [10] described, being driven by Archie Poulas, pass in front of me and turn into Western Avenue and stop directly in front of said frame house where we had been informed the delivery of untaxed whiskey was to be made. Archie Poulas looked around several times and in the meantime Investigator Strubin and I proceeded in the government car and approached said Oldsmobile Sedan and stopped alongside said automobile.

Thereupon I explained to Archie Poulas that I was a federal officer and asked the said Archie Poulas what he had in the car. Poulas replied that he had moonshine. After hearing the reply of the said Archie Poulas Investigator Strubin lifted up a blanket in the rear of said Oldsmobile Sedan and found five one-gallon glass jugs in a gunny sack. The contents of said gunny sack which was removed from under the blanket in the rear of the said Oldsmobile Sedan was examined by me and found to contain five one-gallon glass jugs of untaxed moonshine whiskey. Thereupon I placed defendant Archie Poulas under arrest.

E. T. KELLY

Subscribed and sworn to before me this 1st day of September, 1937.

[Seal]

S. COOK,

Deputy Clerk, U. S. District Court,
Western District of Washington.

Received a copy of the within affidavit this 7th day of Sept., 1937.

EDWARD H. CHAVELLE,
Attorney for Deft.

[Endorsed]: Filed Sept. 7, 1937. [11]

[Title of Court and Cause.]

HEARING ON PETITION TO
SUPPRESS EVIDENCE

Now on this 20th day of September, 1937, Gerald D. Hile, Assistant United States District Attorney appearing for the plaintiff, Edward H. Chavelle, Esq., appearing for the defendant, this cause comes on for hearing on petition to suppress evidence, which is argued by counsel for defendant. The petition is denied. Exception to the ruling of the Court requested and exception allowed.

Journal No. 25. Page 33. [12]

[Title of Court and Cause.]

TRIAL

Now on this 21st day of September, 1937, Gerald D. Hile, Assistant United States District Attorney appearing for the plaintiff, the defendant being in court accompanied by his counsel E. H. Chavelle, Esq., this cause is called for trial pursuant to assignment. The United States District Attorney advises the Court that the Government elects to go to trial on Count I and moves to dismiss Count II of the Indictment, which motion is granted, and said Count II is dismissed. The trial proceeds against the defendant on Count I of the Indictment. Defendant renews the motion to suppress the evidence as to Count I. The motion is denied and defendant requests, and is allowed an exception to the Court's ruling. A jury is impanelled and sworn as follows:

Herbert Hill, Thomas M. McCallister, Edna Shain, Evelyn L. Sherrill, Holly Benson, Estelle R. Graham, Marie Maxwell, Milton F. Weil, F. D. Mande, A. S. Newman, Maudie G. Waible, Ruth C. Jorgensen.

Defendant invokes the rule and witnesses are excluded from the court room except while testifying. The plaintiff makes opening statement of the case to the jury.

Plaintiff's witnesses M. S. Strubin, Edward Kelly and Hugo Ringstrom are sworn and examined. Plaintiff's exhibit numbered 1 is admitted in evidence.

Plaintiff rests its case in chief. Defendant challenges sufficiency of the evidence on grounds stated

in the stenographic record and moves for an instructed verdict of not guilty as to Count I. The motion is denied, exception requested and allowed. Defendant rests. Plaintiff rests.

Defendant again resumes the challenge of the sufficiency of the evidence and the request for an instructed verdict for the defendant, which challenge and motion are denied. Defendant requests and is allowed an exception to the Court's ruling.

[13]

After a five minute recess the trial is resumed, all jurors, defendant, and counsel being present. The cause is argued to the jury and the jury is instructed by the Court. Defendant renews motion for an instructed verdict of not guilty, which is denied, and requested exception to Court's ruling allowed. The jury retires in charge of bailiffs to deliberate of a verdict, thereafter returning into court at 5:10 P. M., with a verdict finding defendant is guilty as to Count I of the Indictment. The verdict is received and read in words and figures as follows: "We, the jury in the above-entitled cause, find the defendant Archie Poulas is guilty as charged in Count I of the indictment herein. Milton F. Weil, Foreman." The verdict is acknowledged by the jury and ordered filed. The jurors are excused from the case and until ten o'clock A. M., October 7, 1937. Sentence is set for ten o'clock A. M., next Thursday.

Journal No. 25. Page 42. [14]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find the defendant Archie Poulas is guilty as charged in Count I of the Indictment herein.

MILTON F. WEIL,

Foreman.

[Endorsed]: Filed Sep. 21, 1937. [15]

[Title of Court and Cause.]

MOTION IN ARREST OF JUDGMENT

Comes now the defendant and moves the court herein as follows:

1. To arrest the judgment herein for the reason that there was no evidence to sustain the essential material allegations of the indictment and that the only evidence in the case was that procured by wrongful search and seizure and timely motions being made to suppress the evidence and were denied and exceptions allowed and that said motions should have been granted.

EDWARD H. CHAVELLE

Attorney for Defendant.

Office and Post Office Address:

315 Lyon Building

Seattle, Washington.

Copy rec'd. Sept. 23, 1937.

G. D. HILE,

Asst. U. S. Atty.

[Endorsed]: Filed Sept. 23, 1937. [16]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant, Archie Poulas, and gives *notice of appeal* in the above entitled cause for the following reasons upon the following grounds:

1. That the said petition filed by the said Archie Poulas to suppress the evidence in the above entitled cause was denied and exception allowed.
2. That the motion to dismiss the indictment herein upon the ground that the conviction of the defendant was based entirely upon unlawful search and seizure and that the said defendant could not have been convicted except by the admission of the evidence so wrongfully seized.
3. That at the end of the plaintiff's case a challenge to the sufficiency of the evidence and a motion for a directed verdict was denied and exception allowed which should have been granted by reason that the said evidence was wrongfully seized.
4. That at the end of the whole case after the plaintiff and defendant had rested and motion for a directed verdict was made and denied and exception allowed and that the same should have been granted as the record disclosed no evidence except that obtained by the unlawful search and seizure.

EDWARD H. CHAVELLE
Attorney for Defendant

Office and Post Office Address:

315 Lyon Building
Seattle, Washington

Copy rec'd. Sept. 23, 1937.

G. D. HILE,
Asst. U. S. Atty.

[Endorsed]: Filed Sep. 23, 1937. [17]

[Title of Court and Cause.]

**MOTION FOR ARREST OF JUDGMENT AND
MOTION FOR NEW TRIAL DENIED**

Now on this 23rd day of September, 1937, Gerald D. Hile, Assistant United States District Attorney appearing for the plaintiff, the defendant Archie Poulas accompanied by his counsel E. H. Chavelle, Esq., is in court for pronouncement of sentence on verdict of guilty, Count I, of the indictment. Motion for a new trial and motion in arrest of judgment is filed. Motions are argued briefly by Attorney Chavelle. Motions are denied. Exception allowed to each ruling. Sentence is passed at this time. Order is to be signed at two o'clock P. M.

Defendant's attorney now requests the Court to fix amount of appeal bond, and the Court now fixes the amount thereof at \$1500.00. The defendant to remain at liberty until two o'clock today on present bond.

Journal No. 25. Page 45. [18]

United States District Court, Western District of Washington, Northern Division.

No. 44313

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ARCHIE POULAS,

alias James Melton Miller,

Defendant.

JUDGMENT AND SENTENCE

Comes now on this 23rd day of September, 1937, the said defendant Archie Poulas, alias James Melton Miller, into open Court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record heretofore imposed herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says, save as he before hath said.

Wherefore, by reason of the law and the premises, it is

Considered, Ordered and Adjudged by the Court that the said defendant Archie Poulas, alias James Melton Miller, is guilty as charged in Count I of the indictment and as found by the jury herein, and that he be committed to the custody of the Attorney General of the United States for imprisonment in the United States Penitentiary at McNeil Island, Washington, or in such other like institution as the

Attorney General of the United States or his authorized representative may by law designate, for the period of twenty months (20), and that the said defendant further pay a fine to the United States of America in the sum of Two Hundred Dollars (\$200), [19] and that the said defendant be committed until said Two Hundred Dollar fine is paid.

And the said defendant is hereby remanded into the custody of the United States Marshal for this district for delivery to the Warden of the United States Penitentiary at McNeil Island, Washington, for the purpose of executing said sentence. This judgment and sentence for all purposes shall take the place of a commitment, and be recognized by the Warden or Keeper of any Federal Penal Institution as such.

Done in open Court this 23rd day of September, 1937.

JOHN C. BOWEN

United States District Judge.

Presented by:

G. D. HILE

Assistant United States Attorney

Violation of Section 1287, Title 26, U. S. C. A.
(Removal of distilled spirits to place other than bonded warehouse provided by law.)

[Endorsed]: Sep. 23, 1937. [20]

[Title of Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Archie Poulas, Seattle, Washington.

Name and Address of Appellant's Attorney:

Edward H. Chavelle, 315 Lyon Building, Seattle,
Wash.

Offense:

Violation of Section 1287, Title 26, U. S. C. A.

Date of Judgment:

September 23, 1937.

Brief description of judgment or sentence:

To serve twenty (20) months at the United States Penitentiary at McNeil Island, Washington, and to pay a fine of Two Hundred Dollars (\$200.00).

Appellant is at liberty on bail.

I, the above named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below.

ARCHIE POULAS,
Appellant.

Dated September 23, 1937. [21]

Grounds of appeal:

1. That the Court erred in denying the appellant's timely petition to suppress the evidence herein.

2. That the Court erred in denying the motion of the appellant in a challenge to the sufficiency of

the evidence on Count I of the Indictment, Count II having been dismissed on the motion of the plaintiff.

3. That the Court erred in denying the renewed motion to suppress the evidence at the end of the plaintiff's case.

4. That the Court erred in denying the motion to dismiss Count I of the Indictment at the close of plaintiff's case.

5. That the Court erred in denying a renewal of the petition to suppress the evidence at the end of the whole case.

6. That the Court erred in denying a motion for a directed verdict after the plaintiff and defendant had rested their cases.

EDWARD H. CHAVELLE

Attorney for Appellant.

ARCHIE POULAS

Appellant.

Office and P. O. Address:

315 Lyon Building

Seattle, Washington.

Rec'd copy Sept. 23, 1937.

G. D. HILE,

Asst. U. S. Atty.

[Endorsed]: Filed Sep. 23, 1937. [22]

[Title of Court and Cause.]

APPEAL BOND OF DEFENDANT,
ARCHIE POULAS

Know All Men by These Presents: That we, Archie Poulas, as principal, and Cornelius C. Chavelle, as surety, by depositing Fifteen Hundred (\$1500.00) Dollars with the Clerk of the Court, and each of us, are held and firmly bound unto the United States of America in the full and just sum of said Fifteen Hundred (\$1500.00) Dollars, to be paid to the United States of America, to which payment, well and truly to be paid, we bind our selves, our heirs, executors, administrators, successors and assigns, entirely and severally by these presents.

Sealed hereinbelow with our seals and dated this 27th day of September, in the year of our Lord One thousand nine hundred and thirty-seven.

Whereas, on the 21st day of September, 1937, in the District Court of the United States for the Western District of Washington, Northern Division, in a case pending in said court between United States of America, as plaintiff, and Archie Poulas, defendant, being numbered 44313 of the records of the office of the clerk of said court, a jury returned a verdict of guilty against the said Archie Poulas, adjudging him guilty as charged in the first count in the indictment of said cause, charging *them* with a violation of Section 1287, Title 26, U. S. C. A., and

Whereas, the said Archie Poulas was thereafter and on the 23rd day of September, 1937, duly sentenced by the court to the custody of the Attorney General of the United States, to be confined in some penitentiary designated by the said Attorney General for a period of twenty months and to pay to the United States of America a fine in the sum of Two Hundred and no/100 Dollars (\$200.00) and that formal judgment and sentence having been filed in the office of the clerk of the above entitled court against the said Archie Poulas, and, [23]

Whereas, the said Archie Poulas, principal herein, desires to appeal from such judgment and sentence so rendered in the above entitled cause against him to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Archie Poulas, principal, intends to diligently pursue all steps in prosecuting an appeal from the said judgment and sentence; and

Now, Therefore, the condition of the above obligation and recognizance is that if the said Archie Poulas, principal herein shall personally appear before the United States District Court for the Western District of Washington, Northern Division, in the City of Seattle, Washington in said District, from time to time and from term to term thereafter as may be ordered by the court, and then and there obey the judgment of said court and not depart from the jurisdiction of said court without leave therefrom; and that this bond and recognizance is further conditioned that the said Archie Poulas, principal, shall be and appear either in

person or by attorney in the United States Circuit Court of Appeals in the Ninth Circuit at San Francisco, California or such City as designated by the said court for the hearing on said appeal, on such day or days as may be appointed for the hearing on said appeal, and diligently prosecute the said appeal and abide by and obey all orders made by the United States Circuit Court of Appeals in said cause and shall surrender himself in execution of any judgment or sentence appealed from by the said Archie Poulas, principal herein, from the District Court of the United States for the Western District of Washington, Northern Division, as the said United States Circuit Court of Appeals for the Ninth Circuit may direct, if the judgment and sentence appealed from and against him be affirmed or the writ of error on appeal be dismissed; and if he shall appear for trial in the District Court for the Western District of Washington Northern Division, on such day or days as may be appointed for a retrial of said cause before the said District Court and abide by and obey all orders made by this court, provided the judgment [24] and sentence against him shall be affirmed, and/or reversed by the United States Circuit Court of Appeals for the Ninth Circuit, and render himself in execution of the Judgment herein, should said judgment and sentence be affirmed, then the above obligation to be void; otherwise to be and remain in full force, virtue and effect.

ARCHIE POULOS,

Principal.

CORNELIUS C. CHAVELLE,

Surety.

Approved this 1st day of October, 1937.

JOHN C. BOWEN,
District Judge.

Approved as to form

J. CHARLES DENNIS,
U. S. Atty.
G. D. HILE,
Asst. U. S. Atty.,
Attys. for Pltf.

Advised that surety is not an attorney at law.

Oct. 1, 1937.

JOHN C. BOWEN,
Judge.

[Endorsed]: Filed Oct. 1, 1937. [25]

[Title of Court and Cause.]

ORDER GRANTING EXTENSION OF TIME
FOR SETTLING BILL OF EXCEPTIONS

Upon motion of the plaintiff in the above entitled cause, good cause being shown therefor, it is by the Court hereby

Ordered that the time for settling, signing, allowing and filing of the bill of exceptions herein is hereby extended to and including the 11th day of November, 1937, and it is

Further Ordered that the present term of this Court be and the same is hereby extended for said purpose until the expiration of said extended time, and it is

Further Ordered that the United States of America, plaintiff herein, shall have until the 4th day of November, 1937, for the purpose of lodging its exceptions and amendments to the proposed bill of exceptions lodged herein by said defendant Archie Poulas.

Done in open Court this 22 day of October, 1937.

JOHN C. BOWEN,

United States District Judge.

Presented by:

G. D. HILE.

Approved as to form,

EDWARD H. CHAVELLE,

Atty. for Deft.

[Endorsed]: Filed Oct. 22, 1937. [26]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the Above Entitled Court:

You will please prepare copies of the following documents and papers in the above cause and forward them under your certificate and seal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, as a transcript of record in said cause, viz:

1. Indictment.
2. Arraignment.
3. Plea of not guilty.
4. Petition to suppress evidence.

5. Affidavit in support of petition to suppress evidence.
6. Affidavits of plaintiff in opposition to defendant's motion to suppress evidence.
7. Record of hearing thereon and journal entry of same including ruling on petition to suppress evidence.
8. Record of the trial and journal entry of order empanelling jury.
9. Verdict of guilty.
10. Motion in arrest of judgment.
11. Motion for new trial.
12. Order denying new trial and in arrest of judgment.
13. Sentence and judgment of Court.
14. Notice of appeal.
15. Assignment of errors.
16. Appeal bond.
17. Order extending time for filing and allowing Bill of Exceptions.
18. Bill of exceptions.
19. Certificate and order allowing bill of exceptions and settling same.
20. Praeclipe for appellate record.
21. Clerk's certificate.

EDWARD H. CHAVELLE,
Attorney for Defendant.

Copy rec'd. Nov. 17, 1937.

J. CHARLES DENNIS,
U. S. Atty.
G. D. HILE,
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 17, 1937. [27]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD

United States of America,
Western District of Washington,
Northern Division—ss.

I, Edgar M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 27, inclusive, is a full, true, and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as the same remain of record and on file in my office, as is required by praecipe of counsel filed and shown herein, with the exception of the Bill of Exceptions and Assignments of Error, the originals of which are transmitted with this transcript, and that the foregoing constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington, Northern Division, to the United States Circuit Court of Appeals for the Ninth Circuit.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court, at Seattle, in said District, this 23rd day of November, 1937.

[Seal]

EDGAR M. LAKIN,
Clerk, United States District Court,
Western District of Washington.
By TRUMAN EGGER,
Deputy Clerk. [28]

[Title of Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered that on the 21st day of September, 1937 the above entitled cause came on regularly for trial in the above entitled court, before the Honorable John C. Bowen, Judge thereof, sitting with a jury. The trial was begun on said date and concluded on the same date by submission to the jury. Said jury on the same date, by its verdict, found the defendant herein guilty of Count I of the indictment.

Plaintiff appeared by J. Charles Dennis, United States Attorney for the Western District of Washington, and G. D. Hile, Assistant United States Attorney for said district.

Defendant appeared in person and by his attorney of record herein, Edward H. Chavelle.

Prior to the date of said trial, on August 26th, 1937 the defendant duly and regularly served and filed herein a petition to suppress in the following form:

“To the Honorable Judges of the United States District Court for the Western District of Washington, Northern Division.

Archie Poulas of Seattle, King County, Washington, respectfully shows: [29]

I.

That on the 17th day of February, 1937 on Western Avenue in the City of Seattle, County of King, State of Washington, your petitioner was sitting in

a sedan Oldsmobile automobile belonging to one, Anderson, and that Internal Revenue Agents, E. Kelly and N. F. Strubin, approached said car without any search warrant or any warrant whatsoever and proceeded to search the same and found in the automobile of said Anderson, something that they claimed was contraband and that without a warrant searched and seized from the said car the said article and seized said automobile and arrested your petitioner.

II.

That your petitioner is not engaged in any business of any kind pertaining to or connected with the transportation of or possession of intoxicating liquors and that affiant was acting in a lawful and orderly manner and was merely sitting in said car waiting for the said Anderson to return but the said officers did not pretend to have a legal right to search said car or seize from the said automobile any of the articles therein contained but without authority and in violation of the constitutional rights of the petitioner they seized and took from said automobile said articles which they intend to use against the said petitioner in the trial of this case.

Petitioner, therefore prays that a rule be made requiring the United States attorney for [30] the Western District of Washington, Northern Division, to show cause before this Court why said search warrant should not be quashed and for nothing holden and why the said District Attorney and Internal Revenue Department should not be restrained from making any use of the said articles

seized by them and for such other and further relief as to the Court shall seem just.

ARCHIE POULAS,

Petitioner.

EDWARD H. CHAVELLE,

Attorney for Petitioner.

315 Lyon Bldg.,

Seattle, Washington.

United States of America,
Western District of Washington,
Northern Division—ss.

Archie Poulas, being first duly sworn, on oath, deposes and says:

That he is the petitioner named in the foregoing petition; that he has read the same, knows the contents thereof and believes the same to be true.

ARCHIE POULAS.

Subscribed and sworn to before me this 26th day of August, 1937.

[Seal] EDWARD H. CHAVELLE,
Notary Public in and for the State of Washington,
residing at Seattle. [31]

Attached to said petition was an affidavit in the following form:

United States of America,
Western District of Washington,
Northern Division—ss.

Archie Poulas, being first duly sworn, on oath, says:

That he has read the petition to suppress herein, knows the contents thereof and believes the same

to be true; that said affiant especially refers to and by such reference makes the same a part of this affidavit;

That on the 17th day of February, 1937, affiant was sitting in a sedan Oldsmobile automobile belonging to one, Anderson, on Western Avenue, in the City of Seattle, County of King, State of Washington when two internal revenue agents, namely, E. Kelly and N. F. Strubin, approached the said car without any search warrant or any warrant whatsoever and proceeded to search the said car and found in the automobile of said Anderson, something which they claimed was contraband and without a warrant searched and seized from the said car the said article and seized said automobile and arrested this affiant; that at the time of said search and seizure affiant was acting in an orderly and lawful manner sitting in said car waiting for the said Anderson to return.

ARCHIE POULAS

Subscribed and sworn to before me this 26th day of August, 1937.

EDWARD H. CHAVELLE

Notary Public in and for the State of Washington,
residing at Seattle.

Received a copy of the within Petition this 27th day of Aug., 1937.

J. CHARLES DENNIS

Attorney for Pltff. [32]

Thereafter, on September 7th, 1937, plaintiff duly and regularly served and filed herein two affidavits

in opposition to said petition to suppress, said affidavits being in the following form:

“United States of America,
Western District of Washington,
Northern Division—ss.

N. F. Strubin, being first duly sworn, on oath deposes and says: That he is an Investigator of the Alcohol Tax Unit, Bureau of Internal Revenue, Treasury Department of the United States, and makes this affidavit on behalf of the United States of America.

That on February 17, 1937, I had information from a source heretofore found to be very reliable in regard to illicit liquor transactions, that the defendant Archie Poulas was to make a delivery of untaxed whiskey on the afternoon of said date to a frame dwelling house located on the westerly side of Western Avenue, Seattle, Washington, in the 3100 block, and that said defendant Archie Poulas would be driving a 1934 brown Oldsmobile Sedan, Washington License A-25-809.

That Investigator Kelly and I proceeded at about 3:30 P. M. on said date to Queen Anne Avenue in Seattle, Washington, near the intersection of Western Avenue and Denny Way, and observed this intersection. At about 4:15 P. M. on said date I saw the Oldsmobile Sedan above described, being driven by Archie Poulas, pass in front of me and turn into Western Avenue and stop directly in front of said frame house where we had been informed the delivery of untaxed whiskey was to be made. [33]

Archie Poulas looked around several times and in the meantime Investigator Kelly and I proceeded in the government car and approached said Oldsmobile Sedan and stopped alongside said automobile.

Thereupon Investigator Kelly explained to Poulas that he was a federal officer and asked the said Archie Poulas what he had in the car. Poulas replied that he had moonshine in the car. After hearing the reply of the said Archie Poulas I lifted up a blanket in the rear of said Oldsmobile Sedan and found five one-gallon glass jugs in a gunny sack, each jug containing one gallon of untaxed moonshine whiskey. Thereupon Investigator Kelly examined the contents of said gunny sack which I had removed from said Oldsmobile Sedan and placed the defendant Archie Poulas under arrest.

That prior to the time the foregoing facts occurred I knew that Poulas had a reputation for being a persistent violator of the Internal Revenue Laws of the United States relating to liquor.

N. F. STRUBIN

Subscribed and sworn to before me this 1st day of September, 1937.

[Seal]

S. COOK

Deputy Clerk, U. S. District Court, Western
District of Washington.

Received a copy of the within affidavit this 7th day of Sept., 1937.

EDWARD H. CHAVELLE

Attorney for def. [34]

United States of America,
Western District of Washington,
Northern Division—ss.

E. T. Kelly, being first duly sworn, on oath deposes and says: That he is an Investigator of the Alcohol Tax Unit, Bureau of Internal Revenue, Treasury Department of the United States and makes this affidavit on behalf of the United States of America.

That on February 17, 1937, I had information from a source heretofore found to be very reliable in regard to illicit liquor transactions, that the defendant Archie Poulas was to make a delivery of untaxed whiskey on the afternoon of said date to a frame dwelling house located on the westerly side of Western Avenue, Seattle, Washington, in the 3100 block, and that said defendant Archie Poulas would be driving a 1934 brown Oldsmobile Sedan, Washington License A-25-809.

That Investigator Strubin and I proceeded at about 3:30 P. M. on said date to Queen Anne Avenue in Seattle, Washington, near the intersection of Western Avenue and Denny Way, and observed this intersection. At about 4:15 P. M. on said date I saw the Oldsmobile Sedan above described, being driven by Archie Poulas, pass in front of me and turn into Western Avenue and stop directly in front of said frame house where we had been informed the delivery of untaxed whiskey was to be made. Archie Poulas looked around several times and in the meantime Investigator Strubin and I proceeded in the government car and approached said Oldsmo-

bile Sedan and stopped alongside said automobile.

[35]

Thereupon I explained to Archie Poulas that I was a federal officer and asked the said Archie Poulas what he had in the car. Poulas replied that he had moonshine. After hearing the reply of the said Archie Poulas Investigator Strubin lifted up a blanket in the rear of said Oldsmobile Sedan and found five one-gallon glass jugs in a gunny sack. The contents of said gunny sack which was removed from under the blanket in the rear of the said Oldsmobile Sedan was examined by me and found to contain five one-gallon glass jugs of untaxed moonshine whiskey. Thereupon I placed defendant Archie Poulas under arrest.

E. T. KELLY

Subscribed and sworn to before me this 1st day of September, 1937.

[Seal]

S. COOK

Deputy Clerk, U. S. District Court, Western
District of Washington.

Received a copy of the within affidavit this 7th day of Sept., 1937.

EDWARD H. CHAVELLE

Attorney for def."

Thereafter, on September 20th, 1937, said petition to suppress came on regularly for hearing before the said Honorable John C. Bowen. After considering the petition to suppress, the affidavit in support thereof and the plaintiff's affidavits in opposition thereto, and the arguments of counsel, the Court on

the same date entered its order herein denying the suppression of the evidence as prayed in said petition, to which defendant excepted and his exception was by the Court allowed. [36]

On September 21st, 1937, said cause came on regularly for trial before said Judge and before a jury duly impaneled and sworn. Prior to the taking of any evidence, the defendant renewed his petition to suppress theretofore filed herein and above set forth in full, and all the allegations thereof. The Court again denied said petition to suppress, to which ruling the defendant excepted and his exceptions were by the Court allowed.

The following proceedings then occurred:

Testimony of N. F. Strubin for the Plaintiff.

N. F. STRUBIN,

a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am an investigator in the Alcohol Tax Unit in the Bureau of Internal Revenue, and have been acting in that capacity for the last six and one-half or seven years. On February 17th, 1937 I had occasion to investigate the activities of the defendant Archie Poulas.

“Q. State what occurred.

A. Kelly and I were working together, and we had information that there would be a delivery of moonshine whiskey made in the 31 hundred block

(Testimony of N. F. Strubin.)

on Western Avenue in this city sometime after 3 o'clock.

Mr. Chavelle: I object to that as pure hearsay.

Mr. Hile: It is a statement of fact.

The Court: The objection is overruled.

Mr. Chavelle: Note an exception.

The Court: The exception is allowed.

Q. (Mr. Hile) Will you please continue?" [37]

Kelly and I proceeded to the vicinity of the above address and parked where we had a view of the 3100 block on Western Avenue. At approximately 4:15 in the afternoon the defendant drove up in an Oldsmobile automobile in front of the address we had under observation, and stopped. After he stopped we drove alongside of his car and Kelly approached him. I heard Kelly ask the defendant what he had in the car, and heard the defendant say he had moonshine whiskey. We then searched the car and in the rear found five one-gallon jugs of moonshine whiskey with no tax stamps on any of the jugs. The defendant was placed under arrest, and we seized the moonshine whiskey and took it to the local office of the Alcohol Tax Unit. We took a sample from the five gallons and placed it in a pint bottle and turned the sample over to our chemist, Mr. Ringstrom. Plaintiff's Exhibit marked 1 for identification is the sample taken from the five gallons of moonshine whiskey seized from the defendant on February 17th, 1937.

(Testimony of N. F. Strubin.)

"Q. At the time you were observing the premises in question were you looking for any specific car or specific person?

A. We were.

Mr. Chavelle: I object to that. I don't think that is material. The fact he placed these premises under observation has nothing to do with this particular case, because there is no issue as to where the defendant was at the time or that he was in any way identified with these premises.

The Court: The objection is overruled.

Mr. Chavelle: Note an exception.

The Court: The exception is allowed." [38]

I was also looking for a brown 1934 Oldsmobile sedan. At the time of his arrest the defendant was in such an automobile. He was alone.

Cross Examination

By Mr. Chavelle:

We received the information relative to the delivery to be made and the Oldsmobile sedan about 3 o'clock P. M., and we arrested the defendant about 4:15 P. M. I was not in the office when I received the information. I cannot state positively where I was when I received it.

(It was then stipulated by counsel for plaintiff for the purpose of the record that the investigators had no search warrant.)

Kelly and I were together. We drove alongside the defendant's car. Kelly asked him what he had in the car, and the defendant said he had moon-

(Testimony of N. F. Strubin.)

shine. He did not mention the quantity, nor first deny that he had moonshine and later admit that he had it. We proceeded to search the car and I saw no moonshine in the car until we searched it. The car was standing still at the time, the defendant being double parked. The moonshine could not be seen from the outside as it was under an automobile blanket and in a gunny sack. I have had many cases where a violator transporting moonshine whiskey in cars has admitted that he had moonshine in the car upon being questioned. I cannot call any such case by name right now.

Redirect Examination

By Mr. Hile:

The liquor was between the front and back seat of the car. One could see that there was something [39] there, but the blanket completely covered the object. There were five one-gallon jugs in one gunny sack, which was tied at one end.

Recross Examination

By Mr. Chavelle:

There was first a thick woolen blanket covering the liquor, and under that the gunny sack containing the five one-gallon jugs. I don't know whether the jugs were in paper sacks. I didn't know what was under the blanket until I raised it. I was driving the government car, and drove the same alongside the defendant's car as soon as he stopped. The defendant's car was a four-door sedan, and the

(Testimony of N. F. Strubin.)

defendant did not get out of his car. Kelly was on the side nearest the defendant.

Redirect Examination

By Mr. Hile:

This occurred in the 3100 block on Western Avenue in Seattle, Washington. The jugs bore no stamps of any kind.

Testimony of Edward Kelly for the Plaintiff

EDWARD KELLY

a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

by Mr. Hile:

I have been an investigator in the Alcohol Tax Unit for the last five years. On February 17th, 1937 I had occasion to investigate the activities of the defendant. In company with Investigator Strubin I went to the [40] vicinity of the 3100 block on Western Avenue, where we remained parked in a government car, placing that address under observation. We had reliable information that a delivery of five gallons of untaxed moonshine whiskey would be made at that place. We remained there for some time until we saw a car with which I was familiar and knew to be used by the defendant. The car was an Oldsmobile sedan, brown in color, a 1934 model, and bore License No. A-25-809. The defend-

(Testimony of Edward Kelly.)

ant drove directly in front of us and drove toward the address in the 3100 block he was attempting to reach. The defendant stopped his car and Strubin and I drove alongside of his car, stopping our automobile parallel to the defendant's car. I stepped out of our car. I approached the defendant, displayed my badge to him and informed him that I was a federal officer. I asked him what he had in the car, and he said "some moonshine whiskey". There was a blanket covering an object in the back of the car. I removed the object and found it was a gunny sack inside of which I found five one-gallon jugs of moonshine whiskey. No revenue stamps were affixed to any of these containers.

We questioned the defendant after placing him under arrest, and he admitted that his name was Archie Poulas and that Miller was an alias. This all occurred in Seattle, Washington. The liquor seized from the defendant was transported by Mr. Strubin and myself to the office of the Alcohol Tax Unit. A sample of the contents of one of the jugs was taken and given to Mr. Ringstrom. Plaintiff's Exhibit marked 1 for identification is the sample removed from one of the gallon jugs seized from the defendant and given to the chemist. The liquor was at all times in my possession up to the time the sample was given to Mr. Ringstrom. The liquor was in the same condition, at the [41] time it was handed to Mr. Ringstrom, as it was at the time we found it in the defendant's possession.

(Testimony of Edward Kelly.)

At the time we had the mentioned address under observation, I was looking for a particular individual, the defendant. I was also looking for a particular car, a 1934 Oldsmobile sedan, License No. A-25-809. I made a notation as to the license number of that car on the day the defendant was arrested.

Cross Examination

By Mr. Chavelle:

I made contemporaneous memorandum of the license number of the defendant's car at the time, and refreshed my recollection from that memorandum. I had been looking for defendant's car from February 9th to February 17th. I also knew the individual I was looking for, and expected to find contraband whiskey in the car. I not only had information from the 8th to the 17th as to the number of the car, but I had also seen the car. I did not get a search warrant or make application for one, nor did I serve one. No one else that I know made application for a search warrant in connection with this arrest and seizure.

There was nothing in the defendant's car as I came alongside it which would indicate that there was any moonshine or whiskey in the car until I went through it. There was a blanket over the sack.

When I first approached the defendant, I displayed my badge to him and informed him I was a federal officer. I was standing beside his car, which had been stopped. He wasn't doing anything which would indicate that he was violating the law. He

(Testimony of Edward Kelly.)

was not speeding; he had been going very cautiously and peering down the street. [42] Strubin was still in the government car. I asked the defendant what he had in the car, and he said "I have some moonshine". I have had others tell me in response to a question that they had monshine in the car. I don't recall any particular case offhand. I could not see what was in the car until after he had admitted he had the moonshine and I had searched it.

Redirect Examination

By Mr. Hile:

I received the information that this car was to arrive in the 3100 block on Western Avenue on February 17th the day of the arrest.

Recross Examination

By Mr. Chavelle:

I knew that the defendant was using this particular car to transport untaxed whiskey, but this particular instance I did not know until the 17th.

Testimony of Hugo Ringstrom for the Plaintiff

HUGO RINGSTROM,

a witness produced on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination

By Mr. Hile:

I am a chemist for the Alcohol Tax Unit.

(At this point, the defendant admitted Mr. Ringstrom's qualifications as a chemist. [43]

(Testimony of Hugo Ringstrom.)

Plaintiff's Exhibit marked 1 for identification is moonshine whiskey. I obtained possession of the exhibit from Mr. Kelly. The contents are in the same condition, except as to quantity, as at the time I received the exhibit. The exhibit has been in my possession since the time I received it. I made an analysis of the contents and found it to be moonshine whiskey of 85.6 proof, which is 42.8 percent alcohol by volume. The contents of the exhibit are suitable for human consumption.

Cross Examination

By the Court:

The sample I tested is known as moonshine whiskey. It is whiskey.

Thereupon the following occurred:

Mr. Hile: I now offer plaintiff's exhibit "1" for identification in evidence.

Mr. Chavelle: We object to its introduction in evidence for the reason and upon the ground we have heretofore filed a petition to suppress, and the testimony has been supplemented from the witness stand, and it has developed there was a period of nine days that the government agents were looking for this particular car and this particular individual, and in that interim was an abundance of time to make application for and to secure a proper search warrant showing probable cause, and none

was secured, and the search was illegal and unlawful, and the arrest was illegal and unlawful, [44] and therefore the exhibit marked plaintiff's exhibit "1" for identification should not be admitted, your Honor.

The Court: The objection is overruled, and plaintiff's exhibit "1" is now admitted.

Mr. Chavelle: Your Honor will allow an exception?

The Court: The exception is allowed.

(Bottle of whiskey admitted in evidence as plaintiff's exhibit "1".)

Mr. Hile: That is the plaintiff's case.

Mr. Chavelle: At this time, your Honor, I move against Count 1—the only count left in the information—and challenge the sufficiency of the evidence, for the reason and upon the ground, your Honor, there has been no proof of the allegations contained in Count 1. A motion to suppress the evidence has been presented to the court and filed in this case, and answering affidavits have been filed, and at this time it develops there is additional evidence that there was sufficient and abundant time, namely, 8 or 9 days in which to secure a search warrant, or show probable cause for securing it, and none was secured, and the search was unlawful and based upon the alleged admission made by the defendant, and made after his arrest, and the petition should be granted, and the jury instructed to return a verdict of not guilty upon the only remaining count, count 1 of this indictment.

The Court: The challenge is overruled and the motion denied.

Mr. Chavelle: Allow us an exception. [45]

The Court: The exception is allowed. The defendant may now make his opening statement.

Mr. Chavelle: We have no proof to submit. We contend the Government has failed to prove its case, and it is unnecessary for us to present any proof.

The Court: Does the defendant rest?

Mr. Chavelle: Yes, your Honor.

The Court: The plaintiff rests?

Mr. Hile: Yes.

Mr. Chavelle: At the close of the whole case, I wish to renew our motion, and in addition to the motion previously made, I make a motion for a directed verdict, directing the jury to return a verdict of not guilty on Count 1, as against the defendant Archie Poulas, for the reason and upon the ground that the evidence that is in the case should have been suppressed and further upon the evidence that has been produced by the plaintiff, as it is now apparent that sufficient time was available, namely, 8 or 9 days, for the plaintiff to have secured, upon the showing of probable cause, a search warrant in this case.

The Court: The motion is denied.

Mr. Chavelle: Allow us an exception.

The Court: Exception allowed.

Mr. Chavelle: Further I believe it is necessary for me to ask the Court to direct the jury to return a verdict of not guilty on Count 1, for the reason the Government has not sustained by proof the allega-

tions of said Count 1, necessary to establish the guilt of the defendant under Count 1. [46]

The Court: The motion is denied.

Mr. Chavelle: Allow us an exception.

The Court: The exception is allowed.

(Respective counsel then argued to the jury.)

The Court then instructed the jury.)

The Court: Any exceptions?

Mr. Chavelle: No, your Honor. The defendant has no exceptions to the instructions, but at this time, in order to preserve the record, I believe it is necessary for the defendant to again request the Court to instruct the jury to return a verdict of not guilty against the defendant Archie Poulas, on Count 1 of the indictment, for the reasons that have been previously stated, namely, that the petition to suppress the evidence should have been granted.

The Court: That motion is denied.

Mr. Chavelle: Note an exception.

The Court: The exception is allowed.

(The jury then retired to consider its verdict.)

Thereafter, on September 21st, 1937, the jury returned its verdict herein, finding the defendant guilty of Count I of the Indictment herein, said verdict being read in open Court in the presence of the Court, the defendant, his attorney of record herein, the jury, and counsel for the government. Said verdict was filed herein on September 21st, 1937.

On September 23rd, 1937 the defendant duly served and filed his motion in arrest of judgment herein, said motion being in the following form: [47]

"Comes now the defendant and moves the court herein as follows:

1. To arrest the judgment herein for the reason that there was no evidence to sustain the essential material allegations of the indictment and that the only evidence in the case was that procured by wrongful search and seizure and timely motions being made to suppress the evidence and were denied and exceptions allowed and that said motions should have been granted.

EDWARD H. CHAVELLE
Attorney for Defendant

Office and Post Office Address:

315 Lyon Building,
Seattle, Washington.

Copy recd. Sept. 23, 1937.

G. D. HILE,
Asst. U. S. Atty."

Said motion was on the same date denied by the Court, to which ruling the defendant excepted and his exception was by the Court allowed.

Thereupon, on the same date, the defendant was sentenced by the Court to imprisonment at McNeil Island Penitentiary, Washington, for a period of twenty months and to pay a fine to the United States in the sum of Two Hundred Dollars, and to stand committed until said fine is paid. Said judgment and sentence was by the Court reduced to

writing and signed in the presence of the defendant and his attorney of record herein, and counsel for the government, and was filed herein on September 23rd, 1937. [48]

Thereupon on September 23rd, 1937 the defendant duly and regularly served and filed his notice of appeal and assignments of error.

Thereafter, on October 21st, 1937 the defendant duly and regularly served and lodged with the Clerk of this Court his proposed bill of exceptions.

On October 22nd, 1937 the Court entered herein its written order extending the time for settling the bill of exceptions, said order being in the following form:

“Upon motion of the plaintiff in the above entitled cause, good cause being shown therefor, it is by the Court hereby

Ordered that the time for settling, signing, allowing and filing of the bill of exceptions herein is hereby extended to and including the 11th day of November, 1937, and it is

Further ordered that the present term of this Court be and the same is hereby extended for said purpose until the expiration of said extended time, and it is

Further ordered that the United States of America, plaintiff herein, shall have until the 4th day of November, 1937, for the purpose of lodging its exceptions and amendments to the proposed bill of

exceptions lodged herein by said defendant Archie Poulas.

Done in open Court this 22 day of October, 1937.

JOHN C. BOWEN

United States District Judge

Presented by:

G. D. Hile

Approved as to form:

EDWARD H. CHAVELLE

Atty. for deft." [49]

Said order was filed herein on October 22nd, 1937.

Plaintiff's amendments to defendant's proposed bill of exceptions were lodged herein November 3, 1937. [J. C. B.] [50]

CERTIFICATE

The foregoing Bill of Exceptions contains all of the material evidence given or offered on the trial, with a jury, of the above cause, and correctly shows the proceedings had on said trial and all material proceedings therein occurring after said trial; and said Bill of Exceptions is correct in all respects, and is hereby approved, allowed and settled, and made a part of the record herein. Said Bill of Exceptions is further settled and approved within the judgment term as heretofore duly and regularly extended by order of Court herein.

Let the Bill be filed and the filing shown of record as of this 9th day of November, 1937.

Done in open Court this 9th day of November, 1937.

JOHN C. BOWEN

Judge who presided at said trial

The foregoing Bill of Exceptions approved this 9th day of November, 1937.

J. CHARLES DENNIS

U. S. Atty.

G. D. HILE,

Asst. U. S. Atty.

Of counsel for Plaintiff

EDWARD H. CHAVELLE

By H. W. HODGWICK

Of counsel for Defendant

Received a copy of the within Pltff's. Proposed Bill of Exceptions this 3 day of Nov., 1937.

EDWARD H. CHAVELLE

Attorney for Defendant

[Endorsed]: Filed Nov. 9, 1937. [51]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR

Comes now the above named defendant, Archie Poulas, by Edward H. Chavelle, his counsel, and says that in the records and proceedings in the above entitled cause there is manifest error in this, to-wit:

1. That the court erred in overruling the motion of the defendant to suppress the evidence,

which motion was made before the case was called for trial upon the ground and for the reason that the evidence was secured by unlawful search and seizure. That timely exceptions were taken to the actions of the court in denying the motion to suppress the evidence and that the petition to suppress the evidence was timely made.

2. That the court erred in allowing testimony to go to the jury during the trial of the said cause, over the objection of the defendant's counsel, as to statements made by the defendant, and as to the surrounding circumstances as part of the res gestae, for the reason that said evidence was secured through said unlawful search.

3. That the court erred in allowing testimony to go to the jury in the trial of the case, over the objection of the defendant's counsel, which was excepted to and said exceptions were allowed. [52]

4. That the court erred in denying the challenge to the sufficiency of the evidence in Count I of the indictment, Count II having been dismissed upon the motion of the plaintiff, for the reason and upon the ground that sufficient evidence had not been produced to constitute a crime.

5. That the court erred in overruling the motion of the defendant for a directed verdict of acquittal, made at the close of the entire cause, and before it was submitted to the jury, which motion was based upon the ground that there was no evidence offered except that secured by illegal search and seizure.

6. That the court erred in denying the motion to dismiss Count I of the indictment at the close of the plaintiff's case.

7. That the court erred in denying a renewal of the petition to suppress the evidence at the end of the whole case.

8. That the court erred in denying defendant's motion for a directed verdict after plaintiff and defendant had rested their cases.

9. That the court erred in denying the motion of the defendant for a new trial, which motion was made in due time after the jury had returned a verdict upon Count I of said information.

Wherefore, the said Archie Poulas, defendant herein, prays that the judgment be reversed and that said court be directed to grant a new trial in said cause.

EDWARD H. CHAVELLE

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315 Lyon Building,
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Received a copy of the within Assignments of Error this 21st day of Oct., 1937.

J. CHARLES DENNIS

Attorney for U. S.

[Endorsed]: Filed Oct. 21, 1937. [53]

[Endorsed]: No. 8686. United States Circuit Court of Appeals for the Ninth Circuit. Archie Poulas, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed November 26, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

